

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WAYNE DEMARS HAMILTON,)

Petitioner,)

v.)

Case No. CV411-007

AL ST. LAWRENCE, Sheriff,)

Respondent.)

REPORT AND RECOMMENDATION

Indicted in state court for drug possession and fleeing to elude a police officer, *see* attached state-court docket print-out, Wayne D. Hamilton¹ filed a 42 U.S.C. § 1983 case to “look into [that prosecution] and get it dismissed.” *Hamilton v. Martin*, doc. 1 at 6 (S.D. Ga. Aug. 27, 2010). The Court has since recommend that *Hamilton* be dismissed with prejudice because plaintiff sought “to affect the fact or duration of his

¹ The Court has amended the above caption to reflect plaintiff’s full (including his middle) name. Also, he named as a co-respondent Georgia’s last Attorney General, Thurbert Baker (Sam Olens is the current A.G.). But under 28 U.S.C. § 2254 Rule 2, Hamilton may only name as respondent the person who currently holds him in custody -- Chatham County, Georgia Sheriff Al. St. Lawrence. So, the Court has deleted Baker’s name from the caption. The Clerk shall amend the docket accordingly, and all subsequent filings shall conform.

confinement by the state, [so the Court instructed him to first] “seek federal habeas corpus relief (or *appropriate state* relief) instead” of a § 1983 judgment. *Id.* doc. 6 at 3 (emphasis added). That meant that he must first exhaust his state court remedies:

So long as review is available in the Georgia courts . . . “this Court is precluded from the consideration of the substance of [Hamilton’s claims] until the issues have been squarely and fairly presented to the Georgia courts for their consideration.” *Fields v. Tankersley*, 487 F. Supp. 1389, 1391 (S.D. Ga. 1980). As Petitioner apparently has not sought relief in state court, he has not exhausted his state court remedies. *See Castille v. Peoples*, 489 U.S. 346, 109 S. Ct. 1056, 103 L. Ed. 2d 380 (1989) (holding that a claim is only exhausted if it was presented to the state courts under remedies available under state law).

Ellis v. Unnamed Defendant, 2010 WL 3842806 at * 1 (N.D. Ga. Sep. 28, 2010); *see also* 28 U.S.C. § 2254(b), (c). *Hamilton*, doc. 6 at 3 n. 3.

Refusing to heed the Court’s exhaustion reminder, Hamilton has just filed a 28 U.S.C. § 2254 petition with this Court. CV411-007, doc. 1. He also moves for leave to file it *in forma pauperis* (IFP). Doc. 2. He did this after entering, in state court, into a “negotiated guilty plea January 1, 2011.” Attach. at 1. He evidently insists on challenging some or all of those proceedings here, rather than within the state courts.

This he cannot do. Instead, he must first invoke his direct and collateral appeal rights within the state court system. He is instructed to file no more unexhausted actions here. The Court therefore **GRANTS** Hamilton's IFP motion (doc. 2) but recommends that his § 2254 petition be **DISMISSED WITHOUT PREJUDICE** to refile *after* he satisfies 28 U.S.C. § 2254(b)(1)(A) (“[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that -- (A) the applicant has exhausted the remedies available in the courts of the State. . . .”); *see also* 28 U.S.C. § 2254(c) (an applicant for federal habeas relief has not exhausted his state remedies “if he has the right under the law of the State to raise, by any available procedure, the question presented.”); *O’Sullivan v. Boerckel*, 526 U.S. 838, 839 (1999).

SO REPORTED AND RECOMMENDED this 26th day of January, 2011.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT of GEORGIA



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133 Montgomery St.
Savannah, GA 31401

Case Details

Case Information

Court: Superior
Case Number: CR100759
Case Type: DRUGS - POSSESSION-F
Judge: HONORABLE JOHN MORSE
Style: State VS HAMILTON, WAYNE DEMARS
Assistant District Attorney: REGINALD C MARTIN
Date Filed: 4/7/2010
Status: ACTIVE
Superior Court Fines: Check for Court Fines
Next Event: 2/10/2011 JURY TRIAL

Attorney Information

STEVE McCUSKER - 540 East Oglethorpe Ave SAVANNAH GA 31401

Bondsman Information

N/A

Defendant Information

DIN: X0091954
Name: HAMILTON, WAYNE DEMARS
Date of Birth:
SSN: Blocked
Race: AFRICAN AMERICAN
Gender: MALE
Height: 64
Weight: 140
Eye Color: BROWN
Hair Color: BLACK



Address:

Prior Address:

Charge	Description	Counts	Severity	Charge Date	Disposition
40-6-395	FLEEING TO ELUDE POLICE OFFICER	1	FELONY	11/18/2009 4:50:31 AM	
16-13-30(A)	POSSESSION CONTROLLED SUBSTANCE	1	FELONY	11/18/2009 4:51:01 AM	

Proceedings

Code	Date	Time	Action	Judge	Details	Docs
JURY TRIAL	2/10/2011	10:00AM		HONORABLE JOHN MORSE		
TRANSCRIPT RECEIVED	1/21/2011				NEGOTIATED GUILTY PLEA JANUARY 6,2011	
MOTION HEARING (MTH)	1/6/2011	2:00PM		HONORABLE JOHN MORSE		
MASTER LIST FOR WITNESSES	12/28/2010					
TRIAL DOCKET FILED	12/26/2010	09:00AM	CANCELLED EVENT - CL	HONORABLE JOHN MORSE		
CERTIFIED MAIL RECEIPT	12/16/2010				7004 1160 0005 7452 4721/	
MOTION - TO DISMISS	12/2/2010				PRO SE MOTION TO DISMISS/	
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	12/2/2010					
STATUS CONFERENCE HEARING	11/22/2010	2:00PM		HONORABLE JOHN MORSE		
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	10/25/2010					
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	10/18/2010					
MOTION - MOTION TO SUPPRESS	10/15/2010				PRO SE/	
ORDER	9/15/2010				ORDER ON DEF'S PRO SE MOTION, DISMISSED/	
CERTIFIED MAIL RECEIPT	7/19/2010				DEF/	
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	7/1/2010					
DEFENDANTS ELECTION TO PROCEED UNDER OCGA 17-16-1	6/21/2010					
ENTRY OF APPEARANCE	6/21/2010				STEVE MCCUSKER/	
STATE'S DISCOVERY DISCLOSURE	6/10/2010				STATE'S DEMAND FOR RECIPROCAL DISCOVERY/STATE'S DEMAND FOR DISCOVERY/STATE'S DEMAND FOR DISCOVERY/STATE'S DEMAND FOR DISCLOSURE OF WITNESS IDENTITIES AND INFO/STATE'S DEMAND FOR WITNESS STATEMENTS/STATE'S DEMAND FOR DISCOVERY	

				REGARDING ALIBI/CERT OF SVC/	
DEFENDANTS REQUEST FOR DISCOVERY	6/8/2010			DEF DISCOVERY REQ AND NTC OF DEF ELECTION TO PROCEED UNDER OCGA 17-6-1 ET SEQ AND CONSOLIDATED MTHS/	
PLEA OF NOT GUILTY	6/7/2010			REFUSED TO SIGN/	
CALENDAR CALL	6/7/2010	09:00AM		HONORABLE JOHN MORSE	
MOTION - MOTION TO SUPPRESS	6/2/2010		DISMISSED	PRO SE MOTION TO SUPPRESS/	
PRO SE LETTER RECEIVED	5/26/2010			SPECIAL DEMURRER/	
DEMAND FOR DISCOVERY	5/26/2010		DISMISSED	PRO SE DEMAND FOR DISCOVERY/	
MOTION - MOTION TO SUPPRESS	5/21/2010		DISMISSED	PRO SE MOTION TO SUPPRESS/	
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	5/17/2010				
NOTICE - OF INTENT	5/7/2010			NOTICE OF INTENT TO USE PRIOR FELONY CONVICTIONS TO AGGRAVATE SENTENCING UNDER OCGA SEC 17-10-7 (C)/	
CERTIFIED MAIL RECEIPT	5/4/2010				
MOTION - TO DISMISS	4/30/2010		DISMISSED	PRO SE PLEA IN ABATEMENT AND MOTION TO DISMISS/	
PRO SE LETTER RECEIVED AND CLERKS RESPONSE	4/21/2010				
ENTRY OF APPEARANCE	4/13/2010			CHRISTOPHER MIDDLETON/	
DEFENDANTS ELECTION TO PROCEED UNDER OCGA 17-16-1	4/13/2010				
SCREENING	4/7/2010 3:55:20 PM			Initial Case Screening / Scanning	
INDICTMENT	4/7/2010				

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